



Warrior One.
Essential Mindfulness For Lawyers®:
Cultivating Greater Effectiveness And Wellbeing
In The Profession

Mindful Justice Project

Criminal Lawyers:
Observations from Essential Mindfulness for Lawyers® Trainings
For District Attorneys and Public Defenders

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I. Introduction

This paper contains observations from three Essential Mindfulness for Lawyers® (“EML”) trainings delivered or being delivered by Warrior One LLC. Two Trainings were delivered to the San Francisco District Attorney’s Office (“SFDA”), in the fall of 2014 and spring of 2015. A third is currently being delivered to the Law Office of the Public Defender for the State of New Mexico (“LOPDNM”). The author was and is the trainer for all three Trainings.

EML training is a blend of traditional mindfulness, contemplative neuroscience, and the psychology of the lawyer’s mind. In creating the EML curriculum, Warrior One drew from the author’s thirty years of law practice, fifteen concurrent years teaching academic courses and EML in the law school classroom, and twenty-five years of meditation and yoga practice, study, and retreats.

Warrior One is a Multiple Activity Provider for the California Bar. All EML trainings discussed in this paper offer(ed) either nine MCLE credits (for the SFDA) or thirteen MCLE credits (for the LOPDNM). For California attorneys, this included four ethics credits, one credit in competence, and one credit in elimination of bias. For New Mexico attorneys, this includes four ethics credits.

This paper reports on the SFDA and LOPDNM training formats, content, attendance, and assessments. It also expresses the author’s thoughts and

observations about the effectiveness of the trainings and the future of mindfulness in the U.S. criminal justice system.

The aspirations for this paper are that it will be useful to participants at the 2015 Mindful Justice Project Conference; add to the growing body of information about mindfulness training, and the value of such training, to professionals in the current criminal justice system; support those who are implementing mindfulness as one tool for change in that system; and perhaps in some small way, help to reduce suffering and bring greater wisdom and compassion into the system.

II. EML Training Formats, Content, Attendance and Assessments

Fall DA Training and Spring DA Training

In 2013, two San Francisco assistant district attorneys (“ADAs”) attended a public EML Training. After completing the training, the ADAs lobbied to bring an EML training to the entire SFDA. Wade Chow, an ADA and the Director of CLE for the SFDA, engaged Warrior One to deliver a pilot training program in the fall of 2014 (“Fall DA Training”). Subsequently, Chow engaged Warrior One to deliver a training, in the spring of 2015 (“Spring DA Training”), to the entire office.

Fall DA Training.

The Fall DA Training was a pro bono offering by Warrior One. Twenty-three ADAs registered. Approximately twelve attended regularly.

The Training was held at the San Francisco Hall of Justice, in the SFDA law library, adjacent to most ADAs’ offices, at a large conference table. The setting was intimate. The Training was comprised of nine, in-person, 1.5-hour sessions taught over nine consecutive weeks.

Each of the first three sessions began with a ten-minute guided meditation. The following six sessions began with a 15-minute guided meditation. After the meditation, each session move into an inquiry into any obstacles to EML practice, changes noticed as a result of practice, and experiences applying EML. The sessions then shifted to the EML lesson for the week, delivered in discussion format with an accompanying PowerPoint.

The sessions began with basic mindfulness practices. They then flowed into mindful communication, emotional intelligence, and training in qualities of mind like kindness and compassion. Ethics was woven into the fabric of the Training and specifically addressed in four of the sessions.

There were exercises, usually in dyads, occasionally during silence, and always including a de-brief. To close each session there was a dedication of merit.

There was homework between sessions, including 10-15 minutes of daily meditation ("Solitary Practice"); exercises for applying mindfulness at work ("Portable Practices"); and suggested videos, articles, and talks. In addition, there was a recorded, guided meditation created by Warrior One and to which participants were encouraged to listen during some of their Solitary Practice sessions.

Spring 2015.

The Spring DA Training generated greater interest than the Fall Training, with nearly fifty ADA signups. An SFDA-sponsored program rather than a pro bono program, the Training was nevertheless once again at no cost to participants.

In anticipation of a larger audience, the DA Spring Training was scheduled on the 5th floor of the San Francisco Hall of Justice, in a formal, courtroom-like hearing room. Although prosecutors were accustomed to this room for CLE programs, it was relatively far from most ADAs' offices.

Again approximately one half of the sign-ups attended regularly, and sometimes even fewer attended. The distance of the Training from ADAs' offices may have partially accounted for lower attendance. In addition, the Training was filmed, and the option to undertake the Training by video, in a self-paced format, also may have contributed to lower attendance at the in-person Training.

The Spring DA Training was organized in the same format and contained the same content as the Fall DA Training, except for one major difference. Wade Chow required that the Spring DA Training sessions conform to the one-hour timeframe for other SFDA in-house CLE. Because the California Bar currently does not allow CLE providers to offer MCLE credit for meditation, all EML sessions contain one hour of training content in addition to meditation time. In the Spring DA Training, this was also the case and thus the guided meditation occurred after the end of the one-hour EML Training. Many participants did not stay for the meditation. This probably impacted the effectiveness of the Training.

The video equipment and room setup necessitated that participants sit behind the bar and the trainer stand in front of the bench, on camera. This "face to the front" arrangement seemed to inhibit check-ins and discussions, but in-session exercises remained robust. Participants appeared to feel comfortable in pairs and small groups despite the more formal setup and venue.

LOPDNM Training

In August of 2014, just before the Fall DA Training began, Craig Acorn ("Acorn"), an assistant public defender at the LOPDNM, inquired about the possibility of offering an EML Training for his office. Acorn is a long-time meditator, and has years of direct experience with the benefits of mindfulness and public defense. He wanted to share those benefits with his colleagues. Since Warrior One is located in Northern California, a training model for partial distance learning was created for the LOPDNM. That model is now being implemented elsewhere as well.

The new model offers more training and support for participants than the previous EML model. The format includes an opening, in-person daylong to begin the Training; nine, 1.5-hour webinars delivered over eighteen weeks instead of nine; a weekly, online, teacher-led, half-hour sitting group and Q&A; and a closing, in-person daylong.

The LOPDNM invited all New Mexico attorneys to participate in the LOPDNM training ("PD Training"). Approximately fifty people signed up. Although the majority of participants are from the LOPDNM, there are a few outside attorneys including, among others, outside defenders (i.e., criminal defense attorneys to whom the LOPDNM sends its overflow), family law lawyers, and an attorney from the ACLU of New Mexico.

In discussions with Acorn and others at the LOPDNM, a decision was made to charge all participants for the Training, although not at Warrior One's commercial rate. This decision was based on the concern that lawyers might not be incentivized to attend a free training.

Ultimately the PD Training was funded in three ways. An anonymous donor who is not a lawyer but who supports bringing mindfulness into the law, contributed part of the fee. The LOPDNM matched that contribution. And, each lawyer was required to pay a fee. PDs were charged a very low rate, outside defenders a slightly higher rate, and all others a moderate surcharge to the outside defender rate. Participation is strong in the Training but there has been no inquiry yet into whether payment is a factor.

Opening Daylong.

The LOPDNM opening daylong occurred on July 18, 2015, in a conference room at the LOPDNM offices in Albuquerque. Forty-five people attended. It began with

introductions and then moved to a discussion about EML, what participants could expect, their motives for taking the Training, and what they hoped to achieve.

After the preliminaries, the daylong moved into a modified retreat format, with optional noble silence, alternating Solitary Practices and Portable Practice exercises, and debriefs. Attorneys received two New Mexico MCLE credits for attendance.¹

Webinars.

The content of the nine PD Training webinars is nearly identical to the content of the Fall and Spring DA Training sessions. As of this writing, four of the nine webinars have been delivered. Fifteen to twenty participants have attend the webinars regularly, with the remainder watching the recorded videos.

The webinars are conducted live, with PowerPoint accompaniment and occasional video streaming. During the webinars there are a variety of participation tools, including polls, open questions, chats, and exercises. Some participants log on in groups in front of one computer and can engage in in-person exercises. For those who do not, exercises are modified to simulate interactions or are changed entirely.

For example, in a mindful communication exercise, instead of speaking and listening, solo participants mindfully read an email from a difficult person, investigated their experience to discover what emotions and thoughts arose, then mindfully wrote back, sitting first for a moment with what their intention was in doing that. Feedback from the exercise was positive.

Participants will earn one MCLE credit for attendance at each webinar (or for watching the video) as long as they attend all sessions of the Training and both daylongs, per the New Mexico Bar's letter of approval, as explained in Footnote 1, below.

Sitting Groups.

Included in the PD Training are optional, weekly online sitting groups, offered from 12:30 to 1 pm each Tuesday. These will continue for the duration of the PD

¹ The New Mexico State Bar approved thirteen (13) credits for the PD Training with a caveat. In order to earn any credit for the Training, participants must attend all sessions (live or recorded) and both daylongs. When the Bar letter was issued, there was surprise, and also concern that potential participants would be deterred by the required commitment, which would then negatively impact enrollment. This may have occurred. However, at approximately forty-five (45) regular participants, the group for the LOPDNM Training is still fairly large.

Training. Attendance at the sitting groups is smaller than at the bi-weekly EML webinar sessions, but participation is greater.

Sitting groups begin with a ten-minute guided meditation, and then shift to a Q&A period. Participants are engaged and seem willing to make inquiries at various levels of practice. The online sitting groups are not recorded and there is no CLE available.

Closing Daylong.

The closing daylong for the PD Training will be held at an offsite location. Although this daylong is not until November 2015, at this writing, the final meeting is anticipated to be mostly silent with some brief interaction, two talks, and time at the end for participants to debrief the Training. There will be two MCLE credits available for participants who are eligible for MCLE credit per the New Mexico approval letter.

III. Reflections From The Trainings

Motives for Taking the Trainings

Assistant District Attorneys.

San Francisco ADAs articulated various motives for learning mindfulness. They feel a deep sense of responsibility for the safety of the people of San Francisco and suffer self-judgment and frustration when they perceive that they've failed to protect them by failing to obtain a conviction. They want to experience less suffering when this happens.

They experience afflictive emotions dealing with public defenders and private defense counsel. Instead of noble, win-some-lose-some battles, many take personally the words and action of rude or aggressive opposing counsel, and react with disdain, disgust and event hatred towards those colleagues. ADAs do not necessarily feel afflicted by anger or righteous indignation, however, characterizing those emotions as useful or even necessary for their work.

Within a few weeks of beginning the EML Training, several prosecutors reported noticing for the first time how much they suffer as a result of a proliferation of afflictive emotions. In other words, they noted that once they are upset, disdainful, or disgusted, these emotions persist even when the original cause is no longer present.

In addition, prosecutors reported that difficult supervisors and large volumes of work create stressful environments that increase their suffering.

ADAs did not express cognitive dissonance or conflict between their personal values and their work, reporting instead that their values as human beings are aligned with their work as prosecutors. Although they know the defense bar and other may characterize them as misguided or worse, prosecutors expressed resilience in the face of this criticism, seemingly based on that alignment.

Public Defenders.

The New Mexico PDs have so far cited anger, overwhelm, anxiety, stress, catastrophizing, self-judgment upon losing a case, addiction and a desensitization to the police being armed², as some of the causes of their suffering.

They have also talked about difficulties with focus, reactivity, their general health, impatience, not remembering to be polite or being the object of impolite or aggressive words or actions, not being able to “turn things off” (always thinking about work), balance, rediscovering inspiration, and learning to better handle the difficulties of the practice, as some of the motives for learning to meditate.

Like ADAs, PDs have so far reported that their values are aligned with their work. They have also said their work enables them to feel connected to others, empowered, and smart; that they “love” their clients; that everyone is very “real” at work, and that theirs is the “best” work (in general, not in comparison to other professionals within the criminal justice system).

What’s Appreciated; What’s Not Appreciated

ADAs appreciated some of the Training and rejected some of it. PDs have had only four EML sessions plus their opening daylong, and have not had the opportunity to formally say what they appreciate and don’t appreciate about the Training. They have, however, offered anecdotal feedback, which is included below.

² In other words, they are dismayed that they’ve abandoned their objections or revulsion to the police carrying weapons.

Foundational practices.

ADAs and PDs (so far)³ have both appreciated the foundational mindfulness training, including awareness of breath, intentionally paying attention to the present moment, and not wishing things would either stay the same if pleasant, or change if unpleasant. They have been able to quickly see how rumination, the constant to-do list, and worrying, cause them to suffer. They report being surprised by the strength and pervasiveness of the judging mind.

They have appreciated focusing on the breath as a simple, if not easy, process. Open or choiceless awareness has been more of a challenge. In a recent PD Training session, for example, a participant asked about the difference between choiceless awareness and the wandering mind, which provoked an interesting discussion.

Mindful Communication and Emotions.

Mindful speaking, listening, and emailing exercises have been well received. These exercises are ends in themselves, but also provide opportunities to explore emotions.

ADAs and PDs have appreciated gaining insight into their own processes during mindful communication exercises during the Training, and in Portable Practices at work. They have been especially interested in seeing their emotions arise when they feel assailed, or when someone is in pain.

Some ADAs initially reported not being aware of emotion at all, at work. This group described the practice of noticing and paying attention to emotions as surprising, alarming, and, in a few cases, revelatory.

Particularly in connection with mindful communication, ADAs appreciated the insight into how their emotions were driving conversations, especially with public defenders and juries. They reported instances when their anger or frustration informed or governed their words or actions, and were pleased to learn that they could make different choices.

“Stopping the War.”

ADAs also appreciated learning that they could choose – and how to choose – whether or not to be at war with their emotions and their experience in general.

³ The DA Trainings have concluded but the PD Training is ongoing. Therefore the present perfect tense is used, below, when the DA and PD Trainings are discussed together, but the simple past is used when only the DA Trainings are discussed.

Although PDs have not yet done this work, discussions with both groups about “dying,” or giving in, to the difficult conditions of the criminal justice system, including to a sense of overwhelm, have been useful. ADAs learned and PDs are beginning to learn to follow Pema Chodron’s instructions in “stopping the war,” to spend less energy on the struggle, and to see how reducing struggle results in more intellectual and emotional energy for their actual work.

Lovingkindness.

In many EML trainings, the first introduction to lovingkindness (initially referred to in EML as “kindness” and “thoughtfulness”) evokes resistance to the idea of metta for self, and skepticism about the appropriateness of lovingkindness in the adversary system in general. The Fall and Spring DA Trainings were no exception.

In the Fall DA Training, ADAs overcame their resistance quickly and appreciated the practice, especially expressing curiosity about and enthusiasm for an EML Portable Practice called, “May You Be Well.” In that practice, participants are encouraged to look up from whatever they are doing, several times each day, get three people in their line of sight, and silently and anonymously wish them well. In one case an ADA who employed this Portable Practice and other metta practices reported being “astonished” by his own change in attitude at home and at work.

In the Spring DA Training, which was less intimate, some ADAs found metta practice uncomfortable. One ADA became hostile in front of the group and said metta was completely inappropriate for prosecutors. This hostility was dismaying to other participants in the room, but later, a second ADA reported later that some of her colleagues who were present at that session were “turned off” by the topic.

Because the lovingkindness training elicited such different responses from the two ADA cohorts, more understanding is needed to determine the best way to offer this training. One thought might be a peer-to-peer pilot, with prosecutors training prosecutors, and PDs, PDs. This idea is discussed in Section IV, below.

Compassion.

Like lovingkindness training, compassion training is both a stand-alone training and part of something else, the EML curriculum in interconnection. ADAs had interesting responses to this segment of the EML Training, and PDs have not yet encountered it.

ADAs were willing to cultivate compassion for self⁴ and for victims. For the most part, they were uncomfortable about cultivating compassion for the accused. Among other rationales, they expressed concern that if compassion “shows” in front of San Francisco juries, which ADAs believe are often comprised of people who are “too compassionate,” it may damage their cases. Some ADAs talked positively about the application of compassion towards difficult colleagues and judges, but few were inclined to practice compassion for defense counsel.

Despite this, ADAs do follow Shakespeare’s advice to, “...do as adversaries do in the law – strive mightily, but eat and drink as friends,” not infrequently joining defense counsel for after-hours partying. While beer pong is not one of Warrior One’s Portable Practices, instructions in intentional, mindful, compassionate social interactions could be useful in opening hearts and minds on both sides.

This appears to be needed because so far, at least, PDs seem no more inclined to be kind or connected to prosecutors than ADAs are to the defense bar. However, PDs have not yet undertaken the lovingkindness or compassion trainings.

The goal with those trainings, as it was with the ADAs, will be to encourage PDs to see their opponents and the police (whom they also view as opponents), as ordinary human beings (“mid-sized mammals,” in meditation teacher Wes Nisker’s parlance), with pain and sorrow of their own, doing their best every day. The EML compassion session includes Longfellow’s poetic reminder that, “If we could read the secret history of our enemies, we should find in each man’s life sorrow and suffering enough to disarm all hostility.”

Appreciation for compassion practice may or may not arise at the LOPDNM. PDs have now heard appellate defense attorney Albert Kutchins’ moving story about the shift he experienced upon discovering that his motivation to serve the accused and convicted was the same as the motivation of a federal prosecutor whom, until the moment of that discovery, Kutchins had considered his enemy. The story was told as a prelude to lovingkindness and compassion training and seemed resonant during a recent webinar.

Appreciation and Respect.

In appreciation training, EML participants are encouraged to see that just as they believe their work is perfectly aligned with their values, so does the other side. This parallel can create openings more easily than some other practices.

⁴ Interestingly, there were fewer objections to cultivating compassion for self than there were to cultivating lovingkindness for self.

Some ADAs realized that by virtue of this parallel devotion, their opponents are worthy of respect. This may be resonant for PDs as well, helping them to cultivate wiser, more compassionate speech and action towards prosecutors and the police.

Among ADAs who felt the appreciation and respect training was useful, participants also noticed how the shift lowered their stress. Perhaps deeper engagement with appreciation training for ADAs and PDs will occur if it is motivated by a desire to feel less stressed.

Equanimity.

It was simple for ADAs to view defendants from the cool distance of equanimity. They appreciated the practice, which uses the refrain, "No matter what I wish for you, your words and actions determine your fate." Concern about the possibility of retributive intention underlying the practice, however, prompted a suggestion to temper the cool wisdom of equanimity with the warmth of compassion practice.

It was predictably more difficult for ADAs to approach their own lives with equanimity. Control and self-judgment got in the way, but there was at least a general acknowledgement that practices like equanimity work over time.

PDs view some clients as victims and may not feel that equanimity is an appropriate practice in those cases. In addition, a few PDs have disclosed that they came to the legal profession after experiencing difficult times themselves, or have encountered such times as lawyers. For these individuals, practicing equanimity for self may present challenges similar to those they encounter practicing equanimity for clients and others.

IV. The Promise of Mindfulness in the Criminal Justice System

Mindfulness offers promise for the criminal justice system. However, optimism should be tempered by a healthy dose of pragmatism.

For starters, the profession is still hesitant to embrace mindfulness, so it will be important to determine the best motivators. MCLE is an obvious one. In Warrior One's DA and PD Trainings, MCLE credit has been a major incentive, with ethics credits the most highly prized. Programs that can provide MCLE credit will therefore probably be most successful in attracting participants. MCLE will probably not factor into success in retaining participants over the course of a

training, however. Successful retention will no doubt remain dependent on excellent content and teachers.

Stress reduction and better physical health are important motivators. Since foundational mindfulness practices, metta practices and compassion practices all address stress and physical health, sharing how the practices can reduce stress and support wellbeing is a good way to attract criminal lawyers to mindfulness.

Other motivations include developing greater focus, learning to be less reactive, and becoming more efficient. These should also be discussed when offering or promoting mindfulness training for criminal lawyers.

In addition to determining the best motivators for criminal lawyers to undertake mindfulness training, attention should be given to what trainings will be most effective. Given the skepticism among half of the ADAs with whom Warrior One worked, for the lovingkindness training, for example, an argument could be made for deleting metta from a beginning course.

However, another perspective may be more useful. An argument can be made for continuing to include metta and compassion practices, but having those trainings taught by peers. A prosecutor who is trained in lovingkindness and compassion and employs those practices at work (and is a good teacher) may be the best trainer for other prosecutors. Such a person will be able to meet skepticism with personal examples of the utility of the practices. Likewise a defense attorney may be the best person to train other defense attorneys.

That said, eventually the two sides should be encouraged to explore the idea of training in and practicing mindfulness together, perhaps with the assistance of a quasi-Restorative Justice model. A pilot program could be undertaken in a given jurisdiction, and from there the two offices could determine how the larger groups could practice together. The level of animosity between the two sides is higher than necessary or wise for effective advocacy. There is thus a need for healing between the two communities, and only so much healing can occur by proxy.

Because the U.S. criminal justice system is an adversary system, inquiry should also be made into mindful conflict. Is mindful conflict as simple as striving mightily but eating and drinking as friends, or is it more complicated than that? Can a zealous prosecutor and a fierce defender adequately represent the interests they've sworn to protect, but do so with wisdom and compassion? If so, what impact will mindful conflict have on an innocent defendant's chances of acquittal, or a guilty defendant's chances for mercy? What impact will it have on

the interests of the county, state, or federal government in protecting its citizens? What impact on the victims?

There are no definitive answers to these questions right now, but as lawyers and other participants in the criminal justice system begin to integrate mindfulness into their work, the answers will emerge. It will become apparent how mindfulness impacts wellbeing and increases wisdom and compassion, how this, in turn, supports positive change inside the system, and how mindfulness can generate ideas and ultimately a structure for a new, fairer, more just, and more mindful, criminal justice system.